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KEN WEBER, CHAIR

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TOM LYTHGOE

**PROCEEDING OF THE BOARD OF COMMISSIONERS  
MEETING TO DISCUSS RIGHTS-OF-WAY ON FOREST SERVICE LANDS  
MONTANA CITY, MONTANA  
COUNTY OF JEFFERSON, STATE OF MONTANA  
April 2, 2007**

**Present:** Commissioners Lythgoe, Notbohm and Weber; Mathew Johnson, County Attorney; Duane Harp and Amy Teegarden, Helena National Forest; Jim Posewitz, Ed Hall, Karole Lee, Kathy Lloyd, Gayle Joslin, Charlotte Trolinger, Bill Hammer, Doug Martin, Russ and Jackie Forba, Pat and Ed Dawes, Bruce Nevins, Kathy Martin, Brian Martin, Carol Ferguson, Chris VanHorsen, Mike Reid, Clifford Meis, Tom Reid, Scott Mainwaring, Douglas Johnson, Steve Marks, Ann Kuntzweiler, Martin Kazierowski, Bob Mullenix, Celia Wolny, Barbara Knebel, Kenda Erickson, Billie Shepard, Pat Bauernfeind, Paul Backlund

Commissioner Weber called the meeting to order and gave a PowerPoint presentation on what the Commission is attempting to do. He then opened the floor for comments.

Charlotte Trolinger stated that she attended the meeting in Boulder the previous Monday. She has a question regarding the responsibility of the County to take over maintenance of the roads. There is still an issue of liability if the County takes responsibility. Commissioner Weber stated that the County does have the ability to classify a road as a non-maintained road. The liability would really fall to a case-by-case basis. If we claim a road or no one claims a road, it still doesn't leave the County out of liability. If a road was a county road at some point, the county can still have a liability. He gave Tucker Gulch as an example. Areas of Tucker Gulch haven't been used in years, to the point that homes were built in the middle of the right-of-way. It has been ruled in court that the road was never abandoned and still exists in the original right-of-way, which may go right through someone's kitchen. Charlotte asked if roads currently maintained by state or federal agencies that the County is disputing, if the County would be liable if they were successful. Commissioner Weber stated that this is correct.

Carol Ferguson stated that she would like to discuss roads on private land, for example the house in the middle of the right-of-way. If the right-of-way is on private land, will it remain public forever or only if properly adopted. What is the situation if there is no knowledge that there is a road there. Commissioner Weber stated that Tucker Gulch was argued all the way to the Supreme Court, and it was ruled that it is a county road. The homeowner has given a private

easement around the structure, but that is not enough. The County right-of-way is public, not private. Carol asked if the same is true for a horse trail, etc. Commissioner Weber stated that they are working their way through this, and can't answer that fully. It could exist until properly abandoned or vacated.

Carol stated that regarding the use of metal mines money, the law is clear that this money is to be used for economic development. There is an increased tax base to be lost when the mines close, and she would like specific examples of how this fits into that criteria. What jobs will this create, other than for attorneys, consultants, surveyors, etc. Commissioner Weber stated that one problem with that statement is that metal mines money can also be used for planning purposes. They have discussed mining, tourism, timber, etc. He also sees this money for a planning and infrastructure building tool.

Paul Backlund stated that the resolution deals specifically with federal public lands within Jefferson County, and asked what it will cost to develop an inventory and what is the long-term cost of the County assuming these rights-of-way and maintaining them. Commissioner Lythgoe stated that the resolution deals with public rights-of-way in Forest Service, BLM, DNRC and private lands. As for the cost, the figure of \$130,000 has been thrown out. The reason that it is out there is because the Commission was getting some pressure to give a number regarding this project. Bonnie Ramey, the Clerk and Recorder, spoke with him, and the only figure that the Commission can speak to is from now to the end of June, which will maybe be \$10,000 to \$15,000. They can't anticipate what will happen in the coming fiscal years. Third, it has been said time and time again, that just because the County may be taking on these roads, doesn't mean that they will be maintaining them. There are county roads that aren't maintained now. They can't put a dollar figure on this. There may be some that are maintained, but he is guessing that most won't be.

Bill Hammer said that there is a lot of private land under public land. If the County is given enough pressure to open the public land, how will private landowners be compensated. Commissioner Weber stated that the short answer is that it all depends on the road or trail they are looking at. If they decided to open a new road, there is a process of condemnation. That is really not part of the current discussion; they are not talking about new roads, but are looking at existing. When the governor asked the Commission about the road petition, he was asking about new roads that the Commission felt were needed. The Commission drafted a lengthy response stating that no new roads are needed, and expressed the desire to keep the existing roads. Bill stated that some of the roads being discussed in the newspapers do go through private lands. Commissioner Weber stated that almost all public rights-of-way go through some private land at some point. Highway 69 runs right through his property. If public right-of-way exists, it stands. The question will be if the County has the responsibility and right to keep the right-of-way open. It is unfortunate that some road names are being bandied about at this point. Commissioner Lythgoe stated that if it is a public right-of-way to public land, it is a public right-of-way and there is no compensation. Holmes Gulch and Tucker Gulch are prime examples. Bill stated that it seems the first step is to research if a right-of-way qualifies for RS2477 status. Commissioner Weber stated that this is correct. All roads will be researched on an individual basis. There will be no blanket resolution.

Commissioner Lythgoe stated that if they in fact were able to prove that a particular road is a public right-of-way, then went to the Forest Service and they gave a legitimate reason that the road should be closed, the County would probably go through the same process and close the road.

Marga Lincoln, *Helena Independent Record*, asked if they are using public right-of-way interchangeably with county road. Commissioner Weber answered no; each right-of-way will be looked at. If they determine that it is a public right-of-way it will then be adopted as a county road. Commissioner Notbohm stated that there are petitioned county roads and there are also some petitioned county roads that have been closed by the Forest Service.

Marga asked that they clarify the competitive process used before they hired Environomics. Commissioner Lythgoe stated that when the Commission decided they were going to look at doing this, they had no idea of the costs. If a project is under \$50,000, there is no need to do an advertised bid. He contacted someone he had been told might be interested in this project. This person discussed \$50-60/hour rate. This person would have been a good match. They also contacted a law firm and had several meetings with them. They discussed their interest in the mining and road pieces. Their research price was high, and they knew that there would be a lot of research for the road piece. A man from the Missoula area also expressed an interest. They met with him, but he never sent back the requested proposal with figures attached.

Commissioner Lythgoe stated that Ed Handl had previously done some work for the Commission, but his expertise is more in the mining portion. Environomics was recommended to them, and there were several phone conversations and a meeting to discuss the Commission's wants and their expertise. Marga asked if they have been given the \$140,000. Commissioner Lythgoe stated that they haven't. Marga asked why the Commission didn't go for bid if it is going to be over \$50,000. Commissioner Lythgoe stated that it won't be over \$50,000 in a fiscal year.

Brian Martin asked what the county road maintenance backlog is at this time. Commissioner Lythgoe stated that he can't answer that. He went on to say that nobody seems to be listening to a couple things. One - they don't know what this will cost. Two - the County is not going to maintain these roads. Brian stated that last year or two years ago there was a mill levy for road equipment upgrades. Commissioner Lythgoe stated that three years ago they asked for a mill levy and the voters did not pass it. Brian stated that he doesn't know what it costs to do research, but he questioned how many projects they are letting go by, that are not being funded. Why are they investing in roads that they are not interested in maintaining when there are kids with no safe access to school. Commissioner Weber stated that the short answer is that they have come to believe it is their responsibility to do so. The long answer is that in the two years since he was elected, almost every day someone comes to talk to him about roads. Then they received the governor's request and people were telling him that the Commission needs to do this. He was skeptical at first, but has become convinced that they need to do this.

Don Harris stated that he hasn't been able to make the Commission meetings since they are during the day. The papers seem to indicate a strong bias against roadless areas. If the

Commission is going to base this course of action on public comment, they need to conduct a valid survey. Commissioner Weber stated that personally, he is not against roadless areas. The very nature of these questions is that they are not in roadless areas because there are roads there. He has a problem with that. Don asked if there is a bias against closing roads. Commissioner Weber stated that he has no bias against closing roads; he has just come to the conclusion through research that they need to do this.

Commissioner Lythgoe stated that he was probably the most hesitant to do this, but he also feels that it is their responsibility to do this. He feels that there have been roads closed, blocked, piled with debris. A lot of roads have been closed over the years. The comments he has been getting over the years is that there is less and less access.

Commissioner Notbohm stated that he does have a bias against closing roads, but he agrees that some of them probably need to be closed. He feels that the Commission needs to be involved, however. There are a lot of roads that have been closed that shouldn't have been. However, if they weren't legally closed, they aren't closed. The Commission's main duty used to be roads. Up until 20-25 years ago, each Commissioner was road foreman in his district. He also noted that the Forest Service and BLM don't always maintain their roads.

Commissioner Weber stated that since he has been in office, the Commission has dealt with vacations and abandonments and have ruled both ways. Each is looked at on a case by case basis; each is looked at on its own merits. As for a valid survey, polls are great, surveys are great, but until the laws change, they are going about this on a legal basis. His personal bias is that he wishes the federal government would come out with a one sentence "this is the way it is" statement with no grey area. They don't have this, so they are doing the best that they can.

Kathy Lloyd read a statement into the record (on file in the Clerk and Recorder's office). She disagrees with the resolution, feels that the Commission is not listening and that this use of metal mines monies is illegal.

Commissioner Weber stated that they have not passed a resolution; it is still in draft form and will be run past the County Attorney before it is passed. This is a course of action that they feel is required by law. They are listening to input and trying to find anything in the law that says that they aren't supposed to do this.

Ed Hall asked how many counties are also involved in the same process. Commissioner Weber stated that pretty much every county they've talked to; some have done a resolution without research and some feel that if the federal government doesn't want the roads, they don't either. Commissioner Lythgoe stated that he has talked to 10 or 15 counties who are looking at doing the same thing. Commissioner Notbohm stated that he has had a lot of comments from other counties. He spoke with someone from Mineral County earlier in the day. One Commissioner was told at a public meeting by the Forest Service that if they wanted the roads they would have to bring them to county standards and maintain them. This is not the case.

Commissioner Lythgoe read a letter from Jim Haslip (on file in the Clerk and Recorder's office).

Jim is very concerned with fire danger. He also read an e-mail from Jim and Donna Cloud, who are in favor of what the Commission is trying to do. (Also on file in the Clerk and Recorder's office.)

Gayle Joslyn stated that she is opposed to the draft resolution, stating that it is full of inconsistencies. This is being paid for with metal mines monies, but the only economic development will be to attorneys. This should be of concern to every landowner; every route can continue to be contended. There are RS2477 hassles across the land. In Colorado, there are vigilante groups of off-roaders. Here in Jefferson County, there are off-road groups crossing private land to access public lands. She asked who is to pay for condemning land or will it just be taken. Commissioner Weber stated that the process was not established to condemn private property. If RS2477 exists, there is a public right-of-way. The process is flawed in his mind, and he wishes there was a black and white answer.

Doug Ablin thanked the Commissioners for their efforts. He is looking for land in Jefferson County and he likes to ride off road. He hopes that he is never portrayed as a vigilante.

Bruce Nevins stated that it has been said that the County didn't participate in the Clancy/Unionville road closures. He went to the meetings, and it seems like the Forest Service preferred plan is the one that always passes, so there is no need for the Commissioners to be there. Control needs to be kept on the local level. He stated that the proponents of this seem to be those that want to drive or 4-wheel and the opponents want to walk or ride horses. He said that the horse owners need to wake up, as they will lose their rights too.

Celia stated that the reasoning behind this - mining, timber harvest, tourism - seem pretty vague. She asked for clarification. Commissioner Weber stated that West Yellowstone in the winter survives on snowmobile traffic. If these rights-of-way can be kept open, loop routes could be created and can be kept for wheeled access. There are groups that are willing to participate in the maintenance of these trails. There could be business for snowmobile rental, for example. Celia asked about mining and timber. Commissioner Weber stated that he was a logger in the past; access to timber was critical as he couldn't afford to punch in a road or hire a helicopter. For independent contractors, access to the forest is a key component. As for mining, one key is exploration and finding a resource body. Access is also critical in this instance. Celia stated that she has been attending meetings from the beginning, and she got the idea that the primary interest was mining. Commissioner Weber stated that this is incorrect. Commissioner Lythgoe stated that he concurred; mining is a piece of it, but not the main thing.

Steve Marks stated that he commends in part what the Commission is trying to do. It is important that there is access to resources. He would encourage them to keep the roads open to deal with the beetle catastrophe that is heading our way. He said that if people think there is fire danger now, they don't know what is coming. It is interesting to know that roads in Quartz Creek are blocked so severely that you can't get in on a horse to get to cattle, and that green trees were cut to form the blockage. Steve stated that if we don't manage our public lands like our private lands, it will be a burnscape.

Doug Johnson stated that receipts from timber sales fund roads, schools and other projects, and will help schools when the mines close.

Barbara Knebel asked when the Commissioners mention that other counties are also doing this, but are going different directions, how is this possible, if this is required by law. Commissioner Weber stated that the question of “by law” seems to be open to interpretation. He stated that his personal bias is that they are doing what they are legally bound to do.

Charlotte Trolinger stated that she heard at the last meeting that there is some road documentation that was completed by a previous Commissioner. She asked how much of this research has been incorporated and if past Commissioners were able to do this research, why can't the current Commissioners. Commissioner Weber stated that County Commissioners have done research in the past and all of it has been incorporated. As for why this Commission is doing the research, they don't feel that the process has been finished, or they wouldn't be here with questions. He doesn't think that anyone would be able to accomplish this by themselves. Also, every facet of the County has increased over the years, and they don't have the time to devote to this project. Theirs is not a nine-to-five, sitting at the desk job. They have a lot of extra meetings, some at night, across the state. The meetings alone can take as much or more time as a nine-to-five job. Charlotte asked about law suits. Commissioner Weber stated that there are currently no lawsuits. These have been avoided through documentation. He said that he feels that people's ideology is making them say what the Commission is doing. What the Commission is trying to do is to establish documentation and set the course of what we did and why we did it. Hopefully future Commissions won't have to deal with this again.

Charlotte stated that she is hearing an ideology bias for mining and timber harvest, and she is also hearing the Forest Service say that there is no problem with mining and timber. Even if the county owns the road, if the road is not available - this is a red herring. Commissioner Weber stated that it is a red herring on both sides and it keeps being brought up. The point is, for them, that this appears to be what they are supposed to do. If a law can be presented that the Commission is not supposed to be doing this, he would love to hear it.

Kenda Erickson stated that it is hard to sit and not say anything. The Commission is not answering questions; what about public comment? The Commissioners don't know what they are doing, what roads they are going after, how much it is going to cost; she asked what they would do if there was no metal mines money available. She wishes that the Commission had a specific direction and that they took public comment. The Commission either doesn't know what they are doing or they are lying. She would like specifics about what roads they will be going after.

Ed Dawes stated that he owns a dirt bike and a horse, as well as a mining claim that is landlocked that he can't sell or do anything with. He identifies with most of the issues. What he would support is to use the existing road inventory and add to it. He would support reasonable research to produce a product to bring before the residents.

Brian Martin stated that the Commission wants to use the County's limited resources on a project

that may or may not bear fruit. They should invest in county roads that are used on a daily basis. They need to put the money on existing roadways. Commissioner Notbohm stated that they cannot use metal mines money to build or repair roads. Commissioner Lythgoe stated that to some people, it wouldn't matter if they used metal mines monies, PILT or general fund monies; they don't want the Commission to do this project. Brian stated that he feels too much of this is being presented as a roads/no roads issue. He feels that the Commission should take this a piece at a time and use the money judiciously. Commissioner Weber stated that they will not be doing a blanket resolution. They are also not pursuing every right-of-way at once. They are going to look at the resolution, look at the resolution some more, vote on the resolution and then discuss it even further. Again, they will not be looking at all the roads at once; they will not follow that course and will never attempt to do a blanket resolution. Commissioner Lythgoe agreed that what they have discussed is what they are going to do - take a few rights-of-way at a time.

It was asked if Sam Samson was ever consulted at any point regarding consulting on this project. Commissioner Weber stated that he was not. The reason for this was asked, as it seems reasonable with the baseline of information. Commissioner Lythgoe stated that Sam is a great resource, as is Jim McCauley. Basically, they are on opposite sides of the fence, but both have had significant input and both are great resources. Sam Samson stated that he and Jim agree on one thing, and that is to maintain public access on public lands; they disagree on the next step however.

Charlotte stated that she would like to hear from the County Attorney. Matt Johnson, County Attorney, stated that when he first discussed this with the Commissioners, they were considering a blanket resolution. He convinced them that this was not a wise thing to do. What they are doing now, researching to find if there are roads out there that qualify for RS2477, will take quite a bit of resources to look at all the roads in the county. They will pick several to research then speak with the Forest Service and BLM for input. If there is a good reason why they don't qualify for RS2477, it will be put to rest then and there. He doesn't want to see litigation; the county doesn't have the resources. He would like to see the Commission find reasonable rights-of-way and work with agencies and seek more public comment. Matt stated that he can't see the Commission grabbing 100 roads, claiming them and taking over.

Commissioner Lythgoe stated that another thing that has happened is that the Commission has had conversations with Helena National Forest, Beaverhead-Deer Lodge National Forest and BLM and have talked regarding the three or four roads at a time approach. All have indicated that they will cooperate with the Commission regarding these roads. They can deal with this on the local level if the Commission provides proof that they are public rights-of-way.

Carol Lee asked if the Commission will be discussing the resolution at the next Commission meeting. Commissioner Weber stated that the next discussion of the resolution will be the following Monday night in Whitehall.

Doug Martin stated that they are talking about looking at roads a few at a time, and asked if they are looking at establishing a process before jumping in and will they establish prioritization.

Commissioner Weber stated that the process will be what they need to establish during a public meeting, most likely at their regular meeting. The resolution is part of the criteria, and they will develop a document protocol. The resolution is an idea of how to start the process; they don't have a firm timeline. The final evening meeting will be held next Monday, and the resolution should be back on the agenda several weeks after that.

Russ Forba asked about private property, and if RS2477 will affect trails that aren't deeded to the County. Commissioner Weber stated that it has the potential to impact, if the right-of-way existed. He noted that many currently private lands were public at one time. Russ asked if they, as the Commission, could vacate all of these easements with a blanket statement. Commissioner Weber stated that he doesn't believe that they can do a blanket statement either way. Matt stated that there are situations that they are trying to address now; a public right-of-way in the 1800s to a mining claim that someone wants to open to a landlocked parcel, which is right in someone's yard. It might be best to abandon this, but these are issues that they will have to address as they come up.

Commissioner Weber stated that if they ignore the underlying question, the problem will skate through and each Commission in the future, as each has in the past, will have to deal with trying to determine these rights-of-way. They are trying to be a little proactive and avoid some lawsuits.

Russ asked if the resolution passes, will there be the ability to petition to close a right-of-way. Commissioner Weber stated that there is that ability now.

Carol Ferguson thanked the Commission for coming and allowing people to ask questions. She feels that the discussion has raised some specters that a deer trail by a house may be opened to 4-wheelers and there is a huge amount of apprehension about where this may lead. She asked if the Commission has looked at the research that Sam Samson and Jim McCauley did and listened to the recommendations made. The Commission needs to limit their scope to a definable output. Commissioner Weber stated that he has looked at Sam's research a lot and has also looked at Jim's research. He has looked at a ton of documentation from the past 100 years. He asked if all of the information is correct, and answered that it isn't; there is some lacking and some missing. They are trying to answer the questions that assail the County. They need to look at all the roads, abandon those that need abandoning, and open those that need opening; if a road was never abandoned properly, it is still a county road. Commissioner Lythgoe noted that the roads that Sam mentioned need to be looked at will probably be the first roads that they consider.

## **MEETING ADJOURNED**

### **ATTEST:**

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**BONNIE RAMEY**

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**KEN WEBER, CHAIR**



**CLERK AND RECORDER**

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**TOMAS E. LYTHGOE, COMMISSIONER**

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**CHUCK NOTBOHM, COMMISSIONER**